

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: BKY Case No. 03-45801-NCD  
Chapter 7  
Awoods Rubber Company, Inc.,  
Debtor(s).

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Julia A. Christians, Trustee, ADV No. 04-4268-NCD  
Plaintiff,  
vs.  
Badger Tool Works, Inc.,  
Defendant(s).

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**NOTICE OF HEARING AND MOTION**  
**FOR DEFAULT JUDGMENT**

1. Julia A. Christians, Trustee ("Plaintiff") by and through her undersigned attorneys, moves the Court for the relief requested below.

2. The Honorable Nancy C. Dreher, United States Bankruptcy Judge, will hold a hearing on this motion at 10:30 a.m., on December 1, 2004, in Courtroom No. 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel may be heard.

3. Any response to the motion must be in writing and be filed and delivered not later than November 26, 2004, which is three (3) days before the hearing date (excluding Saturdays, Sundays, and holidays) or filed and served by mail not later than November 19, 2004, 2004, which is seven days prior to the hearing (excluding Saturdays, Sundays, and holidays). **If no response is timely served and filed, the Court may enter an Order granting the requested relief without a hearing.**

4. This case was commenced as a Chapter 11 case on August 18, 2003, was converted to a Chapter case on October 16, 2003 and is now pending before this Court.

5. This Court has jurisdiction over this motion pursuant to 28 U.S.C. § 157 and 1334 and Bankruptcy Rule 5005. This motion arises under 11 U.S.C. § 547 and Bankruptcy Rule 7055, and Plaintiff seeks an order granting default judgment in this proceeding. This motion is filed under Bankruptcy Rule 9014. Pursuant to 28 U.S.C. §157, this is a core proceeding.

6. Based upon the Affidavit of Plaintiff Julia A. Christians, Trustee, and the documents filed within this proceeding, the Trustee seeks entry of judgment in favor of Plaintiff and against Defendant for avoidance and recovery of preferential transfers as set forth in Plaintiff's Complaint.

**WHEREFORE**, Plaintiff Julia A. Christians, Trustee, respectfully requests that the Court grant her motion for default judgment, awarding Plaintiff judgment in the amount of \$3,975.00, plus prejudgment interest and Plaintiff's costs and disbursements herein, and granting such other and further relief as the Court may find just and equitable.

LAPP, LIBRA, THOMSON, STOE BNER  
& PUSCH, CHARTERED

Dated: November 2, 2004

/e/ Julia A. Christians

Julia A. Christians, (#157867)  
One Financial Plaza, Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402  
(612) 338-5815

Attorneys for Plaintiff, Julia Christians, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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**AFFIDAVIT OF JULIA A. CHRISTIANS, TRUSTEE**

Julia A. Christians, being first duly sworn, states and deposes as follows:

1. Within 90 days prior to the commencement of this case, Debtor transferred to Defendant, for or on account of an antecedent debt, the sum of \$3,975.00.
2. At the time of such transfer, Debtor was insolvent and the effect of such transfer enables Defendant to obtain more than it would receive under Chapter 7, Title 11, United States Code, if the transfer had not been made and Defendant received payment of such debt to the extent provided by the Bankruptcy Code.
3. Plaintiff filed her Complaint in the above-captioned adversary proceeding on or about September 27, 2004.
4. The Clerk issued a Summons on September 27, 2004, and the Summons and Complaint were served by regular and certified mail on Defendant on September 27, 2004.

5. More than 30 days have now passed since the date the Summons was issued and Defendant has not served an Answer or any other response and is, therefore, in default.

6. Plaintiff's costs incurred herein amount to \$154.65 for the filing fee and service costs. Interest has accrued from the date of the commencement of the action at a rate of 4% per annum amounting to \$15.68.

7. Based on Defendant's default, Plaintiff asks that the Court enter an Order for judgment against Defendant in favor of Plaintiff for recovery of an avoidable, preferential transfer in the amount of \$3,975.00, plus costs of \$154.65, plus interest amounting to \$15.68, for a total of \$4,145.33.

8. To Affiant's best knowledge, Defendant's full name and address is: Badger Tool Works, Inc., 2835 Lathrop Avenue, Racine, WI 53405.

9. To Affiant's best knowledge, Defendant is not now in the military service or of incompetent status.

Dated: November 3, 2004

  
Julia A. Christians, Trustee

Subscribed and sworn to before me  
this 3<sup>rd</sup> day of November.

  
Notary Public



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**MEMORANDUM OF LAW IN SUPPORT OF**  
**MOTION FOR DEFAULT JUDGMENT**

Julia A. Christians, Trustee (“Plaintiff”), submits this Memorandum of Law in support of her Motion for Default Judgment.

**ARGUMENT**

I. STANDARDS FOR DEFAULT JUDGMENT.

Bankruptcy Rule 7055, incorporating Fed.R.Civ.P. 55, provides that entry of default judgment is appropriate when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise.

II. PLAINTIFF HAS ESTABLISHED THE ELEMENTS TO MAINTAIN AN ACTION FOR AVOIDANCE AND RECOVERY OF A PREFERENTIAL TRANSFER.

In order to sustain a claim for a preferential transfer, the moving party must demonstrate a prima facie case under §547 of the Bankruptcy Code. There are five enumerated elements

contained in §547 that must be satisfied to maintain a preference action. 11 U.S.C. §547(b) provides, in pertinent part:

“Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property-

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made-
  - (A) on or within 90 days before the date of the filing of the petition; or
  - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if-
  - (A) the case were a case under chapter 7 of this title;
  - (B) the transfer had not been made; and
  - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.”

11 U.S.C. §547(b).

A prima facie case is established only if the following five elements are proven:

1. A transfer of the debtor’s property;
2. The transfer must be to a creditor;
3. The transfer must be on account of an antecedent debt;
4. The transfer must be made on or within 90 days from the date of the bankruptcy and while the debtor was insolvent;
5. The transfer must permit the creditor to receive more than it would in Chapter 7 liquidation.

In re Brinker, 12 B.R. 936 (Bankr. Minn. 1981).

There is no dispute regarding Debtor’s insolvency during the preference period. 11

U.S.C. § 547(f) provides that:

For the purposes of this section, a debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

11 U.S.C. § 547(f).

The facts supporting each of the elements of the preference are established in the

uncontested Verified Complaint and the Affidavit of the Trustee filed and served herewith. As a matter of law, the transfer described in Plaintiff's Complaint constitutes a preference under 11 U.S.C. § 547.

Because Plaintiff, as Trustee, is entitled under 11 U.S.C. § 547 to avoid preferential payments to Defendant, the Trustee is entitled under Section 550(a) to recover the value of the preferences, plus interest thereon at the pre-judgment rate from the commencement of this proceeding. *See*, 11 U.S.C. § 550(a).

Accordingly, Plaintiff is entitled to default judgment on its action, for avoidance and recovery of the transfer in the amount of \$3,975.00 plus prejudgment interest, costs and disbursements.

LAPP, LIBRA, THOMSON, STOEBNER  
& PUSCH, CHARTERED

Dated: November 3, 2004

/e/ Julia A. Christians  
Julia A. Christians, (#157867)  
One Financial Plaza, Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402  
(612) 338-5815

Attorneys for Plaintiff, Julia A. Christians, Trustee

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**UNSWORN CERTIFICATE OF SERVICE**

I, Sarah L. Fortin, declare under penalty of perjury that on November 3, 2004 I mailed copies of the attached **Notice of Hearing and Motion for Default Judgment; Affidavit of Julia A. Christians, Trustee; Memorandum of Law in Support of Motion for Default Judgment; and Findings of Fact, Conclusions of Law, and Order for Judgment** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Badger Tool Works, Inc.  
Attn: Scott J. Floyd  
2835 Lathrop Avenue  
Racine, WI 53405

Office of the U.S. Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Executed on: November 3, 2004

/e/ Sarah L. Fortin

Sarah L. Fortin, Legal Secretary  
Lapp, Libra, Thomson, Stoeber &  
Pusch, Chartered  
120 South Sixth Street, Suite 2500  
Minneapolis, MN 55402  
612/338-5815



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**FINDINGS OF FACT**

1. Within 90 days prior to the commencement of this case, Debtor transferred to Defendant, for or on account of an antecedent debt, the sum of \$3,975.00.
2. At the time of such transfer, Debtor was insolvent and the effect of such transfer enables Defendant to obtain more than it would receive under Chapter 7, Title 11, United States Code, if the transfer had not been made and Defendant received payment of such debt to the extent provided by the Bankruptcy Code.
3. Defendant failed to Answer, or otherwise defend against, Plaintiff's Summons and Complaint herein.

**CONCLUSIONS OF LAW**

1. The transfer by Debtor to Defendant described in Plaintiff's Complaint herein is an avoidable preference that the Trustee is entitled to set aside and recover on behalf of the bankruptcy estate.
2. Plaintiff is entitled to entry of judgment by default.

**ORDER FOR JUDGMENT**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered that judgment be entered in favor of the Plaintiff and against Defendant, in the amount of \$3,975.00, plus costs of \$154.65, plus interest of \$15.68, for a total of \$4,145.33.

**LET JUDGMENT BE ENTERED ACCORDINGLY HEREWITH.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Nancy C. Dreher  
United States Bankruptcy Judge